

Remarks/Arguments

Applicants acknowledge the Examiner's withdrawal of the previous final Office Action pursuant to 37 CFR 1.114, the entry of new Claims 43-60, and the constructive election of Claims 43-53 and 60 for examination. The Examiner has objected to Claim 51 because of an informality involving the spelling of the word "microprocessor". By this Response, Applicants have amended Claim 51 to correct this misspelling. The Examiner has rejected Claims 43-52 and 60 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. With respect to this rejection of the Claims, it is respectfully submitted that the Examiner has made an initial interpretation of the present invention that is contrary to the disclosure of the subject application. Accordingly, it is appropriate to first address the proper interpretation of the present invention and its disclosure.

More specifically, the Examiner has interpreted the disclosure of the subject application at pages 15-17 as indicating that "AFUs are critically linked" to the use of clear plastic modified plates in the present invention. This interpretation is in error. In contrast to the Examiner's position, AFUs are merely the chosen digital units for conveniently expressing the output of the present invention's fluorometric reader that translates the light signal received to an analogue output that is directly proportional to the amount of fluorescence detected in the hybrid assay system. This original analogue signal is converted to a digital output that is compared with signals from comparison or control cells and with other signals or data stored in the analyzer to generate an output that is correlated to known assay data, as known in the art.

The Examiner's attention is directed to page 5 of the subject application, and more specifically to the prior art patents identified and incorporated by reference therein. For example, US 5,518,686, identified at page 5, line 16, is directed to a specimen processing and analyzing system owned by the current assignee of the present invention. This United States patent has a priority date

of 1991 and Fig. 16 thereof details the process of reading and converting the fluorometric data to a digital output. Similarly, US 4,681,741 identified at page 5, line 27 of the subject application and incorporated by reference therein, also is owned by the assignee of the present invention and details the processing of such comparative data in 1986. Thus, undue experimentation is not necessary to practice the present invention as the technology and techniques for the digital processing fluorometric data are known in the art and the output data of the subject invention has been correlated with the known biometric data for the subject microorganisms or interest.

It is the comparative relationship of such data relative to the well known data for the analysis of the subject microorganisms that is relevant to the present invention, not the name of the digital units chosen. The disclosure of the present invention identified by the Examiner at pages 15-17 of the subject application is directed to the present invention's unique solution to the problem of fluorescent crossover of "cross-talk" when using clear plastic panels and to the validation of the associated data relative to "the extensive databases compiled testing organisms using white plastic plates" (page 17, lines 1-9). Accordingly, independent Claims 43 and 60 have been amended to more clearly identify this digital data output and, it is respectfully submitted, are now in condition for allowance. The foregoing amendments are equally applicable to the remaining dependent claims which merely add additional limitations to the independent claims. For these reasons, it is respectfully submitted that all claims presently pending in the subject application are allowable and notice to that effect is earnestly solicited.

Conclusion

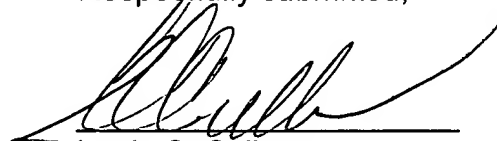
Applicants have amended the claims of the subject application to address the Examiner's objection and rejections and to place the remaining claims in condition for allowance. Therefore, Applicants respectfully assert that the pending claims contain allowable subject matter and request that the rejections

be withdrawn and that the Examiner allow the presently pending claims. If the Examiner believes that a telephonic interview with Applicants or the Applicants' attorney will advance the allowance of this case, the Examiner is requested to contact the undersigned at the telephone number provided below.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-1329.

Respectfully submitted,

Dated: 2/25/04



Louis C. Cullman
Registration No. 39,645
Attorney for Applicants

STRADLING YOCCA CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Telephone: 949.725.4000
Facsimile: 949.725.4100